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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/341,821	09/01/1999	MICHAEL J. WARING	CV0244	5635

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EXAMINER

GHALI, ISIS A D

ART UNIT

PAPER NUMBER

1615

DATE MAILED: 02/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/341,821

Applicant(s)

Waring et al.

Examiner

Isis Ghali

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) ☒ Responsive to communication(s) filed on Oct 24, 2001

2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

### Disposition of Claims

4) ☒ Claim(s) 1-6, 8-10, 13-15, and 17-20 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1-6, 8-10, 13-15, and 17-20 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirements.

### Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some\* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

15) ☐ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

20) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

The receipt is acknowledged of applicants' request for extension of time and notice of appeal, both filed 6/25/2001; and request for extension of time and request under 1.53(d), both filed 10/24/2001.

Claims 1-6, 8-10, 13-15, 17-20 are pending in the application and status of the claims are as follows:

#### ***Continued Prosecution Application***

1. The request filed on 10/24/2001 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/341,821 is acceptable and a CPA has been established. An action on the CPA follows.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmolka, US 4,495,168 ('168).

US '168 teaches a pressurized gel composition in an aerosol container (abstract; col.5, lines 1-2). The composition comprising water and glycol (examples).

4. Claims 1-6, 8-10, 13, 15, 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over of Court et al., EP 0 666 081 (EP '081) by itself or in view of Sperry et al., US 5,059,187 ('187).

EP '081 is teaching gel wound dressing comprising material impregnated with a composition comprising :

a) from about 0.05% to 10% by weight of natural gelling agent;

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- b) from about 1.0% to 10% by weight of hydrocolloid;
- c) from about 5.0% to 30.0% by weight of an alkylene glycol and
- d) at least 50% by weight of water.

The wound dressing is packaged and sterilized. The gel composition of the reference can be extruded in the form of gel onto gauze. See page 2, lines 20-24; page 3, lines 14-18. The gel of the reference has viscosity of 50-800 Pas

However, EP '08 does not teach the method of making the aerosol vessel.

US '187 is teaching method for providing an aerosol container and method for cleaning the wound including introducing the wound cleaning solution through an opening into a pouch and then the opening is closed by a valve, the container is then sterilized and the propellant is introduced into the can. See the abstract; col.3, lines 1-10; col.5, lines 8-21.

Accordingly, it would have been obvious for one having ordinary skill in the art at the time of the invention to include the gel composition of Court in the aerosol vessel of Sperry, motivated by the teaching of Sperry et al. that the rigid container of the aerosol is adapted to withstand a high pressure (col.2, lines 18-21), with reasonable expectation of success of treating wounds by delivering gel composition from an aerosol vessel.

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5. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP '081 in view of US '187 as applied to claims 1-6, 8-10, 13 and 15, 17-20 above, and further in view of Tipton et al., EP 0 560 014 (EP '014).

The teachings of EP '081 by itself or in view of '187 discussed above do not teach the treatment of the sinus wound.

EP '014 disclosing a spray apparatus includes a vessel with a dispensing means which can be a valve and nozzle mechanism and it contains a composition which can be administered to the skin, mucous membrane of the mouth and the nose (sinuses), tissue injury (wound), or body cavity (sinuses). The composition contains polyethylene glycol and propylene glycol (wound gel disclosed by the applicants). See the abstract; col.5, lines 4-6; col.14, lines 24-35; col.17, lines 25-27; col.22, line 52; col.23, line 8.

It is obvious to one having ordinary skill in the art at the time of the invention to use an aerosol containing the gel composition of EP '081 to treat sinus wound, motivated by EP '014 teaching that sprayed dressing can be applied to body cavities, with reasonable expectation of success of delivering the wound healing gel to the sinuses.

### ***Conclusion***

6. All claims are drawn to the same invention claimed in the parent application prior to the filing of this Continued Prosecution Application under 37 CFR 1.53(d) and could

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have been finally rejected on the grounds and art of record in the next Office action. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing under 37 CFR 1.53(d). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Isis Ghali whose telephone number is (703) 305-4048. The examiner can normally be reached on Monday-Friday from 7:00 to 5:30 Eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Isis Ghali

Patent Examiner

  
THURMAN K. PAGE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600